for the death of her illegitimate child. But Corpus Juris says: "Where there are statutes substantially legitimizing bastards as to the mothers, as conferring on them the right to inherit or transmit inheritances from or through the mother, a mother may recover for the death of her bastard child." [24] Yet the court cites this work as authority for the opposite view.

It must be borne in mind that this note applies only to the right of a *mother* to recover for the death of her illegitimate child. The right of the *father* of such a child is not considered.

This precise question does not seem to have arisen in Virginia.

W. C. H.

CONSTRUCTION OF THE LIMITED LIABILITY ACT.—Some difference of opinion has existed regarding the correct construction of Section 4283 of the Revised Statutes of the United States, part of what is commonly known among Admiralty practitioners as the Limited Liability Act. This section is as follows:

> "The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

Where only one vessel is at fault "without the privity or knowledge of such owner", and there is no question of joint undertaking involved, it is clear that upon surrender of the faulty vessel, or her present value, plus freight then pending, the shipowner has completed his part and may step out of the controversy. And where two or more vessels belong to the same owner, and both, say, contribute negligently to an accident both must be surrendered.[1] But the question becomes more difficult of solution when we consider the case of more than one vessel, all belonging to the same owner, engaged in a joint enterprise, where one of the vessels, in pursuit of the joint undertaking, commits a tort. What must the owner surrender in order to limit his liability under the Act? Must he pay into court the value of the single wrongdoing vessel plus freight, or the value of the whole flotilla engaged in the joint enterprise? The words of the Act are "* * * shall in

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[24] 17 C. J. 1220.

[1] *The Eugene F. Moran*, 212 U. S. 466 (1909); *The Bordentown*, 40 Fed. 682 (1889); *The San Rafael*, 141 Fed. 270 (1905); *Thompson, etc., Assn.* v. *McGregor*, 207 Fed. 209 (1913); *Shipowners, etc., Co.* v. *Hammond*, 218 Fed. 161 (1914).

no case exceed the amount of value of the interest of *such owner in such vessel,* and her freight then pending."

In order best to understand the true meaning of the Act, let us try to get the intention of Congress in passing the Act. In *The Rebecca,*[2] Judge Ware tells us that practically all the maritime nations of Europe, with a possible exception of England, recognized such a doctrine of Admiralty law as of old and ancient standing.[3] And we have the word of the Supreme Court to the same effect in *The Main* v. *Williams,*[4] where Mr. Justice Brown tells us that the maritime nations of Europe had long since protected their shipowners against financial extinction by thus limiting their liability to the value of the vessel plus her pending freight. The United States, on the other hand, had no such act until comparatively recently, the year 1851. The attention of Congress had not been called to the necessity for such legislation until the case of *The New Jersey Steam Nav. Co.* v. *Merchants' Bank.*[5] In that case the owners of a steamboat which had been accidentally destroyed by fire were held liable for a great sum in coin, which had been shipped upon the steamer and lost.[6] After this case, Congress, realizing the great uneasiness produced among shipowners by its doctrine and the crying need for such an act to put American shippers upon equality with the shippers of maritime Europe, passed our present Limited Liability Act.[7]

May it not safely be said, then, that Congress, in passing the Act, intended to prevent overwhelming financial losses to our shipowners, and to limit their liability in case of accidents to the value of the unit employed in the marine venture? To get back to the precise point under discussion and to interpret the words of the Act in connection therewith, does the marine unit to which the

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[2] 20 Fed. Cas. 373 (1831).

[3] *The Rebecca, supra.* "The principle of the limitation of the responsibility of the owners for the acts of the master * * * originated in the maritime usages of the Middle Ages, and more particularly in the Mediterranean, where commerce first acquired activity and extension after the fall of the Western Empire. In Italy and the southern ports of France and Spain the custom seems to have been nearly coeval with the revival of maritime commerce".

[4] 152 U. S. 122, 128 (1894).

[5] 6 How. 344 (1848).

[6] In that case (*New Jersey Steam Nav. Co.* v. *Merchants Bank, supra*) the *amount* of the damage was not even argued at the bar, the issue being merely the liability or nonliability of the shipowners. But Mr. Justice Woodbury, in his concurring opinion, declared that, "By the ancient practice in admiralty, in case of contracts of freight made by the master, it is true that the owners were liable, whether *ex contractu* or *ex delicto,* and whether *in personam* or *in rem,* for only the value of the vessel or the capital used in that business. Dunlop, Adm. 31. And if the vessel was lost, the remedy against the owners was entirely lost in admiralty. Ware, D. C. 188. Yet it is a conclusive answer, that here, as well as abroad, the rule of the civil and common law is to give the whole loss. 2 Kent. Comm. 606; 3 Kent. Comm. 217. And that this rule of full damage in a libel in admiralty has been adopted after much consideration".

[7] *The Main* v. *Williams, supra.*

owner's liability is limited comprise the single wrongdoing vessel merely, or the whole number of vessels engaged in the joint venture?

Benedict tells us that "Where more than one vessel belonging to the same owner is involved in a disaster, a surrender of but one vessel is not a complete surrender." [8] But this rule seems ambiguous, inasmuch as it does not appear whether or not the vessels "involved in the disaster" are themselves at fault. In the case of *The Columbia,*[9] a barge was being towed by a tug, both vessels belonging to the same owner. The barge had no motive power of her own, and in docking her the tug master negligently rammed her into the pier, causing her to spring a leak from which she soon sunk. The owner, when libeled for the loss of the barge's cargo, attempted to limit his liability by a surrender of the value of the barge. But the court held that the tug also must be surrendered. Great weight was put by the court on the case of *The Northern Belle,*[10] decided by the Supreme Court in 1869, in holding both tug and tow the marine unit. In the latter case, Mr. Justice Miller said:

> "The barges are owned by the same persons who own the steamboats by which they are propelled, and are generally considered as attached to and making part of the particular boat in connection with which they are used; though quite often an individual or corporation owning several boats, running in a particular trade, have a large number of barges, which are taken in tow by whatever boat of the same line may be found most convenient. In every case, however, *the barge is considered as belonging to the boat to which she is attached for the purposes of that voyage.*" (Italics ours).

In the first case cited, *The Columbia, supra,* Ross, Circuit Judge, in delivering the opinion of the court, said:

> "In the present case, the barge and the tug had the same owner, and both were operated by the same carrier. In the voyage, both were necessarily under the control of the master of the tug. They constituted the instrument of carriage, to which the wheat was liable for the service, and on which the owners of the cargo had a lien for the due performance of the contract of carriage."

And in another part of the same opinion, we find:

> "* * * the tug and barge are, in law, considered one vessel, for the purpose of the voyage in question, and, whether the accident giving rise to the loss and damage be directly attributable to the acts of the master of the barge, or to those of the master of the tug, it is equally the negligence of the

[8] BENEDICT, ADMIRALTY, 4th ed., § 543.
[9] 73 Fed. 226 (1896).
[10] 9 Wall. 526 (1869).

carrier, for which it contracted to be liable. It results that, in according the petitioners a limitation of liability without the surrender of the tug Ocklahama, the court below was in error."

Very much in point with the above holding is the case of *The Captain Jack* [11] where a wrecking company, engaged in raising a sunken vessel, employed a scow and tug, both of which it owned. Through a defect in the rigging of a boom on the scow, a marine engineer standing on the deck of the scow was killed. The company sought to limit its liability by a surrender of the scow. The court held, however, that since both tug and scow had the same owner and were engaged in a joint venture, both vessels must be surrendered in order to limit the company's liability.

These decisions strike us as being eminently sound, especially when the Congressional intent in passing the Limited Liability Act is considered—that is, the prevention of financial extinction through overwhelming losses to shipowners. The danger of such extinction is negligible when the shipowner's liability is limited to the value of the *res* employed by him in his marine venture.

However, it was held in the case of *Van Eyken* v. *Erie R. Co.*,[12] that where a tug was towing a barge, and the barge was brought in contact with a pier, owing to a defective steering apparatus on the tug, and the towing hawser parted, the barge ramming and injuring another vessel, the owner of both tug and barge was required to surrender the tug only in order to obtain a limitation of liability. In that case the court speaking through Thomas, D. J., said:

"The remaining question relates to the necessity of surrendering barge No. 9 in addition to the tug. The libelant suggests this upon the theory that the barges and tug 'formed a common united instrument of commerce, moving as an entirety, when the tort was committed, although afterwards separated in the successive collisions'. *The Bordentown,* (D. C. 1889) 40 Fed. 682; *The Columbia,* (1896) 19 C. C. A. 436, 73 Fed. 226. Generally, in collisions the tug has been regarded as the responsible actor. In the present case the proximate cause of the injury was the disordered steering gear, and in rem the tug alone would be liable. The fact that the defective condition of the tug enabled her tow to collide with the pier, and become detached, and injure another vessel, did not make the presence or movement of the tow a primary agent in effecting the injury. The presence of the barges was a part of the condition under which the wrongful act of omission took effect. It was not a part of the wrongful act. Therefore it is concluded that the respondent may limit its liability upon surrendering the tug."

Later cases, concurring with the above decision, seem inclined

[11] 169 Fed. 455 (1909).
[12] 117 Fed. 712 (1902).

to hold the meaning of the words *such vessel,* as used in the Act, to refer merely to the one vessel in the joint enterprise whose negligence, wrongful act, or omission was the primary factor in causing the accident.[13]

By a rather recent case in the United States Supreme Court,[14] the question seems to be settled once and for all. In that case a steam tug, with a car float lashed to its port side and a disabled tug lashed to its starboard side, brought a car float into contact with another vessel, through negligence of the master of the steam tug. All three vessels belonged to the same owner and were in pursuit of the owner's business. It was held that the value of the steam tug alone, and not the value of the flotilla, was the limit of the owner's liability. In delivering the opinion of the court, Mr. Justice Holmes said:

> "The words of the statute are 'The liability of the owner of any vessel for any . . . injury by collision . . . shall in no case exceed the amount or value of the interest of such owner in such vessel'. The literal meaning of the sentence is reinforced by the words 'in no case'. For clearly the liability would be made to exceed the interest of the owner 'in such vessel' if you said frankly, in some cases we propose to count other vessels in although they are not 'such vessel'; and it comes to the same thing when you profess a formal compliance with the words but reach the result by artifically construing 'such vessel' to include other vessels if only they are tied to it."

T. H. M.

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[13] *The W. G. Mason,* 142 Fed. 913 (1905); *The Transfer No. 21,* 248 Fed. 459 (1917); *The Erie Lighter 108,* 250 Fed. 490, 497 (1918).

[14] *Liverpool, etc., Co. v. Brooklyn, etc., Term'l.,* 251 U. S. 48 (1919).